

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1181 of 2023

Arising Out of PS. Case No.-1 Year-2021 Thana- THAWE District- Gopalganj

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AJAY KUMAR @ AJAY PRASAD Son of Surajbali Prasad @ Suryabali Prasad Resident of Village- Dhatiwana, P.S.- Thawe, District- Gopalganj
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh, Adv.
For the Opposite Party/s : Ms. Nirmala Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 03-07-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

Petitioner seeks bail, who is in custody since 02.01.2021 in connection with Trial No.02/2021, arising out of Thawe P.S. Case No. 01/2021, F.I.R. dated 01.01.2021, for the offences punishable under Sections 399, 402, 414 of the IPC, Sections 1(-b)a, 26, 35 of the Arms Act and Sections 8/20(b) (ii) (a) of the N.D.P.S. Act.

According to prosecution case, 1.200 Kgs. of Ganja has been recovered from the vehicle in question.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case. He further submits that from bare perusal of the F.I.R. as well as seizure list it appears that one mobile phone and one fighter punch has been recovered from conscious possession of the



petitioner. He further submits that the contraband has been recovered from the vehicle in question and the quantity of the contraband is less than the commercial quantity, so, there is no embargo of Section 37 of the N.D.P.S. Act to enlarge the petitioner on bail.

Learned Additional Public Prosecutor for the State on the other hand on the basis of material available on record and the case diary vehemently opposed the prayer for bail of the petitioner and submits that the recovered contraband is Morphine, which is more than the commercial quantity, so, there is embargo of Section 37 of the N.D.P.S. Act. He further submits that the petitioner has also carried four criminal antecedent other than the present one.

F.S.L. report is being quoted hereinbelow:-

Result of Examination.

“BRUCINE’, ‘MORPHINE’, and 6-MONOACETYL MORPHINE were detected in the content of the tin dibba kept in plastic dibba as describe above. MORPHINE and 6-MONOACETYL MORPHINE are opium derivative narcotic drugs while ‘BRUCINE’ is a plant alkaloid.”

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 which says that before grant of bail, the Court must



have reason to believe that petitioner has not committed the offence and in the event of release he would not commit similar offence.

The issue was considered by the Hon'ble Supreme Court in the case of **State of Kerala and Ors Vs. Rajesh & Ors**, reported in **2020 (12) SCC 122, Narcotic Control Bureau Vs. Mohit Aggarwal**, reported in **AIR 2022 SC 3444 and SLP (CRL) No.2351 of 2023 (Union of India Vs. Ajay Kumar Singh @ Pappu)** dated 28.03.2023.

The recovery of huge quantity of Morphine from possession of the petitioner would not justify that the petitioner had no knowledge of the narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release. Hence, I am not inclined to enlarge the petitioner on bail, at this stage, in connection with Trial No.02/2021, arising out of Thawe P.S.Case No.01/2021 pending in the court of learned 1st Additional Sessions Judge-cum-Special Judge N.D.P.S., Gopalganj.

Prayer is refused.

(Rajesh Kumar Verma, J)

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